

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:10-CV-00391-BO**

SURJIT SINGH SAUND, an individual,)

Plaintiff,)

v.)

**M. M. FOWLER, INC. d/b/a FAMILY)
FARE CONVENIENCE STORES, a)
North Carolina Corporation,)**

Defendant.)

**DEFENDANT’S MOTION TO DISMISS
AND FOR PARTIAL SUMMARY
JUDGMENT
(Fed R. Civ. P. 12(b)(6) & 56)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant M. M. Fowler, Inc. d/b/a Family Fare Convenience Stores (“Fowler”) respectfully requests that this Court dismiss with prejudice Plaintiff Surgit Singh Saund’s claims under 42 U.S.C. § 1981 and North Carolina common law. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Fowler respectfully requests that this Court grant its motion for summary judgment on Plaintiff’s Title VII claims and dismiss those claims with prejudice.

Plaintiff alleges that Fowler denied him a store operator position because of his religion and race. Based on these allegations, he asserts claims of (1) religious discrimination in violation of Title VII, (2) race discrimination in violation of 42 U.S.C. § 1981, and (3) wrongful failure to hire/contract in violation of public policy under North Carolina common law. Each claim should be dismissed with prejudice.

Plaintiff’s Title VII claims are time-barred because he failed to commence this action within 90 days after receiving the operative right-to-sue letter from the EEOC. Plaintiff’s § 1981 race discrimination claim should be dismissed because he has not stated a plausible claim of

intentional racial discrimination and because his allegations, in fact, disprove the claim. Plaintiff's wrongful failure to hire/contract claim should be dismissed because North Carolina recognizes no such claim.

For these reasons and based on the arguments and authorities set forth in the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss and for Partial Summary Judgment, Fowler respectfully requests that this Court dismiss this action in its entirety with prejudice.

This the 15th day of November, 2010.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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This the 15th day of November, 2010.

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